



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/11583/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 26 March 2019**

**Decision & Reasons Promulgated
On 11 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**MUHAMMED USAMA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. Z. Rahman, Counsel instructed by IMK Solicitors
For the Respondent: Ms. A. Everett, Home Office Presenting Officer

DECISION AND REASONS

1. By way of a decision promulgated on 23 October 2018 I set aside the decision of the First-tier Tribunal. The appeal came before me to be remade.

The hearing

2. The appeal was listed for 14 February 2019. On that occasion, I adjourned the hearing as the Appellant's wife was not in attendance, and neither was his mother-in-law. The appeal came before me again on 26 March 2010.

The Appellant's wife and her mother were not in attendance, but the reasons for this will emerge in the body of my decision.

3. I heard oral evidence from the Appellant. Both representatives made oral submissions. I reserved my decision.
4. I have taken into account the documents contained in the Appellant's bundle (166 pages) and the Respondent's bundle (to G6).
5. It was submitted by Ms. Rahman that the Appellant met the requirements of paragraph EX.1(b) of Appendix FM in relation to family life, and paragraph 276ADE(1)(vi) in relation to his private life.

Burden and standard of proof

6. The burden of proof lies on the Appellant to show that, at the date of the hearing, the decision is a breach of his rights to a family and private life under Article 8 ECHR. The standard of proof is the balance of probabilities.

Decision and Reasons

Appendix FM

7. I find that the Appellant is no longer in a subsisting relationship with his wife. I accept that the Appellant may be hoping for a reconciliation but, on the evidence before me, as at the date of the hearing, I find that the relationship is no longer subsisting.
8. As I have set out above, the appeal was adjourned on 14 February 2019 because the Appellant's wife and her mother were not in attendance. It was submitted at the time that it was anticipated that they would attend if the hearing were adjourned to a later date.
9. The Appellant gave evidence that the relationship with his wife was not very good. They had been arguing. They had had problems on and off during the course of their relationship and, over the last couple of months, things had got worse. The Appellant gave evidence that he was no longer living with his wife. He has moved to her grandfather's house. Her grandfather is also related to the Appellant as an uncle. He moved from the marital home in February, some six weeks prior to the hearing.
10. The Appellant gave evidence that he had had no contact whatsoever with his wife since he left the marital home in February. He gave evidence that his uncles and his wife's grandfather had advised him not to contact her but to give her some space.
11. When asked about the future of his relationship, the Appellant said that he believed it would get better. However, he also gave evidence that the

main problem had been his mother-in-law. He said that, had he and his wife been living separately, things would have been different.

12. I find that his wife and her mother are well aware of the consequences of the Appellant's appeal being refused. This much is clear from the statements which they provided for the hearing in the First-tier Tribunal. The Appellant was asked whether his wife was aware of the hearing. He gave evidence that he did not know whether she was aware of it, but it was likely that she was. He said that his mother-in-law was aware of the hearing, just as she had been aware of the hearing on 14 February 2019.
13. The Appellant gave evidence that his wife is unlikely to go against her mother's wishes. He said that the emotional attachment between them was very high. His mother-in-law always took his wife's side, and made matters worse. He gave evidence that it was his mother-in-law who told him to move to his wife's grandfather's house.
14. Although the Appellant gave evidence that he was not sure whether his wife knew of the consequences of the Appellant losing this appeal, I find that the signed witness statement indicates that she is. I therefore find that the fact that neither his wife nor her mother attended the hearing is a clear indication that they consider that the relationship is over. It is clear from their witness statements that they understand the difficulty of the relationship being maintained if the Appellant returned to Pakistan.
15. Although the Appellant gave evidence that he had reason to believe that his wife was hoping for a reconciliation, he has not spoken to her since February. She is not supporting his appeal. Although this is a matter which may cause the Appellant some unhappiness, and he is still married to his wife, I find that their relationship is not subsisting, given that they have had absolutely no contact with each other since February.
16. I therefore find that paragraph EX.1 cannot apply to the Appellant.

Paragraph 276ADE(1)(vi)

17. I have carefully considered whether there are very significant obstacles to the Appellant's integration into Pakistan. Although the Appellant has not been to Pakistan since he was 13 years old when his family moved to Saudi Arabia, I find that his parents, his three brothers and his sister are living in Kashmir, Pakistan. I find that the Appellant is in contact with his family in Pakistan.
18. In addition to his immediate family, the Appellant gave evidence that his wife's grandfather, his uncle, with whom he lives, is currently in Pakistan. He also has a home in Kashmir. I find that the Appellant has both immediate and extended family in Pakistan with whom he is in contact. I find that the Appellant has strong family ties to Pakistan.

19. It was submitted that the Appellant would not be able to stay with his parents because there was not enough space for him in the house. It was also submitted that they would not be able to support him financially.
20. I have evidence from the Appellant's family in Pakistan which indicates that the Appellant's parents, together with his three brothers, live in one house together with their families. I have evidence that the Appellant's sister also lives in Kashmir in a three bedroomed house. Her husband works in Malaysia, and she lives there with her children. I have evidence that the Appellant's uncle, his wife's grandfather, has a home in Kashmir. I find on the balance of probabilities that the Appellant's family members will be able to accommodate him.
21. In terms of financial support, I find that the Appellant is financially supported by his relatives in the United Kingdom. The Appellant said that he could ask, but that they would be very unlikely to give him money were he to return to Pakistan, as the reason that they give him money is that they are hoping that the relationship with his wife will improve. However, I find that no satisfactory reason was given for why they would not continue to financially support him, even on an ad hoc basis, were he to return to Pakistan, at least until he finds employment. As was submitted by Ms. Everett, the amount of money that they give him in the United Kingdom would go much further in Pakistan. It would be cheaper for them to support him financially there.
22. I find that the Appellant will not be destitute, as was submitted, but that he will have the support of family members in Pakistan and also support from the United Kingdom. I find on the balance of probabilities that the Appellant will be supported by family members on return to Pakistan.
23. I find that the Appellant came to the United Kingdom in order to study. He has gained ACCA qualifications in accountancy. When asked in cross-examination, the Appellant said that he could use this qualification in Pakistan, albeit that he had obtained it in 2015. However, it was submitted that these were not transferrable qualifications. No evidence was provided to support this. The Appellant said that he had asked a friend about job opportunities and had been told that he had less chance of obtaining a job due to his lack of experience. I find that the Appellant has obtained a highly respectable accountancy qualification which will assist him in obtaining employment in Pakistan. I appreciate that he may not be aware of the employment market in Pakistan, but he has many family members and friends in Pakistan who will be able to assist him.
24. I find that the Appellant speaks Urdu. Although the Appellant has not been to Pakistan for some time, I find that he spent his childhood there. I find that he has not lost all cultural connections to Pakistan. I have no evidence that the Appellant has any health problems.

25. I find, taking into account all of the evidence, that the Appellant has failed to show that he meets the requirements of paragraph 276ADE(1)(vi).

Article 8 outside the immigration rules

26. I have considered the Appellant's appeal under Article 8 in accordance with the case of Razgar [2004] UKHL 27. I find that the Appellant does not have a family life with his wife as I find that the relationship has broken down. No evidence was provided to suggest that he has a family life for the purposes of Article 8 with any other family members in the United Kingdom. I find that the Appellant has been in the United Kingdom for almost ten years. I find that he has built up a private life during this time sufficient to engage the operation of Article 8. I find that the decision would interfere with his private life.
27. Continuing the steps set out in Razgar, I find that the proposed interference would be in accordance with the law, as being a regular immigration decision taken by UKBA in accordance with the immigration rules. In terms of proportionality, the Tribunal has to strike a fair balance between the rights of the individual and the interests of the community. The public interest in this case is the preservation of orderly and fair immigration control in the interests of all citizens. Maintaining the integrity of the immigration rules is self-evidently a very important public interest. In practice, this will usually trump the qualified rights of the individual, unless the level of interference is very significant. I find that in this case, the level of interference would not be significant and that it would be proportionate.
28. In my assessment of proportionality, I have taken into account all of my findings above. In assessing the public interest I have taken into account section 19 of the Nationality, Immigration and Asylum Act 2002. Section 117B(1) provides that the maintenance of effective immigration controls is in the public interest. There is a strong public interest in refusing leave to remain to those who do not meet the requirements of the immigration rules.
29. The Appellant speaks English (section 117B(2)). The Appellant is not financially independent but relies on family members for financial support (117B(3)).
30. In relation to his private life under sections 117B(4) and (5), I find that the Appellant has never been here unlawfully. He has always had leave to remain. Section 117B(4) provides that little weight is to be given to a private life established when a person's leave has been precarious. The Appellant came to the United Kingdom as a student. There was no expectation that he would be granted leave to remain permanently. It was submitted that he had been here for almost ten years lawfully, but he has not been here for the period required under the immigration rules. While a period of ten years is a lengthy period, I have found above that he has

not shown that there would be very significant obstacles to his integration into Pakistan, and I find that his private life could continue in Pakistan.

31. Section 117(6) is not relevant.
32. As part of my consideration of his private life, I have considered the Appellant's relationship with his wife, and the likelihood of reconciliation. I have found above that he does not have a family life with his wife. I have set out above that the evidence before me does not indicate that there is any prospect of reconciliation, especially given the fact that the Appellant's wife and mother-in-law are aware that, if this appeal is dismissed, and the Appellant returns to Pakistan, the likelihood is that the relationship will not continue. The Appellant's wife has provided statements in the past in support of the Appellant's appeal, but she has shown no indication that she wishes to support the Appellant's appeal now. I find that, although it may be with some sadness for the Appellant, this relationship is over and that there is no prospect of reconciliation. Had his wife or her mother considered that there was a prospect of reconciliation, I find they would have supported the Appellant's appeal, even if the relationship was going through a difficult period.
33. Further, although the Appellant said that he took advice from his uncles and his wife's grandfather, for example in relation to giving his wife some space, and although he said that the only reason he was financially supported by his uncles was because they hoped for a reconciliation between the Appellant and his wife, neither the uncles nor his wife's grandfather attended the hearing or provided any written evidence in support. Although his wife's grandfather is in Pakistan, he could have provided written evidence. The Appellant's evidence was that his uncles had spoken to his mother-in-law on the day prior to the hearing. No reason was given for why they could not have attended the hearing to give evidence in support of the Appellant's appeal.
34. The Appellant also gave evidence that his mother-in-law had given the Appellant's uncles an update about his wife's health when they saw her on the day prior to the hearing. He said that she had been referred to hospital in Oxford, and that she had mental health problems. However, I have no recent medical evidence. The Appellant said that his mother-in-law had refused to provide updated medical evidence, and told his uncles that the Appellant should have approached her directly. I have no evidence from his uncles to corroborate this. Further, the Appellant's wife is an adult, and could have provided the evidence herself, had she wished to. I have no evidence to suggest that she is currently so unwell that she would have been unable to provide this evidence.
35. It was submitted that all of the Appellant's social ties were in the United Kingdom, but I have no evidence of these beyond his family. I find that he can maintain friendships using modern methods of communication. The Appellant is not working. He has studied in the United Kingdom, but his

studies are at an end. He will be returning to Pakistan with the benefit of the education and qualifications he has gained here.

36. I find, taking all of the above into account, and placing significant weight on the fact that I have found that the Appellant does not meet the requirements of the immigration rules, that the balance comes down in favour of the public interest in maintaining effective immigration control. I find that the Appellant has failed to show that the decision is a breach of his rights to a family or private life under Article 8 ECHR, or indeed any other rights protected by the Human Rights Act 1998.

Notice of Decision

37. The appeal is dismissed on human rights grounds.

38. No anonymity direction is made.

Signed

Date 9 April 2019

Deputy Upper Tribunal Judge Chamberlain

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 9 April 2019

Deputy Upper Tribunal Judge Chamberlain